

Case No. A107100

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR**

CHURCH OF SCIENTOLOGY
INTERNATIONAL, A California
nonprofit religious corporation,

Plaintiff and Petitioner,

vs.

GERALD ARMSTRONG, and
individual; and DOES 1 THROUGH 50,
inclusive.

Defendants and Respondents.

Appeal Case No. A107100

[Consolidated with Case No. A107095]

ON APPEAL AFTER JUDGMENT ENTERED BY THE HONORABLE
LYNN DURYEE, MARIN COUNTY SUPERIOR COURT

APPELLANT'S OPENING BRIEF

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INTERNATIONAL**

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TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION.....	1
STATEMENT OF THE CASE.....	1
A. Prior Proceedings.....	1
B. Proceedings Below.....	6
ARGUMENT.....	9
I. The Proper Standard Of Review Is De Novo	9
II. The Court Erred As A Matter Of Law By Declining To Apply The Liquidated Damage Clause of the Contract According To Its Express Terms	10
A. Collateral Estoppel Precluded Re-Adjudication Of The Liquidated Damage Clause's Reasonableness	11
B. The Trial Court Applied The Wrong Legal Standard.....	13
C. The Trial Court Erred By Limiting Liquidated Damages Because Armstrong Purportedly Was "Punished Enough"	16
CONCLUSION.....	18

TABLE OF AUTHORITIES

PAGE

Cases

<i>Barbara v. Sokol</i> , 101 Cal. App. 3rd 725 (1980).....	15
<i>Better Foods Markets v. American District Telegraph Co.</i> , 40 Cal. 2nd 179 (1953).....	15
<i>Brinton v. Bankers Pension Services</i> , 76 Cal. App. 4th 550 (1999).....	12
<i>Grinham v. Fielder</i> , 99 Cal. App. 4th 1049 (2002)	12
<i>H. S. Perlin Co. v. Morse Signal Devices</i> , 209 Cal. App. 3rd 1289 (1989)	17, 18
<i>Harbor Island Holdings v. Kim</i> , 107 Cal. App. 4th 790 (2003)	16
<i>Hong v. Somerset</i> , 161 Cal. App. 3d 111 (1984)	15, 16
<i>Kelly v. McDonald</i> , 98 Cal.App. 121, 125 (1929)	17
<i>Lomeli v. Department of Corrections</i> , 108 Cal. App. 4th 788 (2003),	9
<i>Lucido v. Superior Court</i> , 51 Cal. 3rd 335, (1990).....	12
<i>McCarthy v. Tally</i> , 46 Cal. 2d 577 (1956)	17
<i>Mycogen Corp. v. Monsanto Co.</i> , 28 Cal. 4th 888 (2002).....	12
<i>O'Connor v. Televideo System, Inc.</i> , 218 Cal. App. 3rd 709 (1990)	14
<i>People v. Ault</i> , 2004 Cal. LEXIS 7574 at *22-23 & n. 8 (Cal. Sup. Ct., August 16, 2004).....	10
<i>People v. Barragan</i> , 32 Cal. 4th 236 (2004).....	12
<i>People v. Neely</i> , 70 Cal. App. 4th 767 (1999)	13
<i>Rodriguez v. Solis</i> , 1 Cal. App. 4th 495 (1991)	9

United Savings & Loan Ass'n of California v. Reeder Development Corp.,
57 Cal. App. 3d 282 (1976) 15, 16

Weber, Lipshire & Co. v. Christian, 52 Cal. App. 4th 645 (1977)..... 14

Federal Cases

Chodos v. West Publishing Co., 292 F.3d 992 (2002)..... 17

Statutes

Civil Code Section 1671..... 11, 14, 16, 18

INTRODUCTION

This appeal addresses fundamental errors of law in a judgment of the Marin County Superior Court that declines to enforce a contractual liquidated damage provision already adjudicated to be reasonable and enforceable in a prior action between these same parties. The trial court misapplied statutory and case law governing this provision and *sua sponte* rewrote the underlying contract to immunize the defendant from any future liability for breaching a contract he admits having breached well over 200 times, has been adjudicated to have breached 137 times, and which he vows to continue to breach indefinitely in the future.¹

STATEMENT OF THE CASE

A. Prior Proceedings²

The essential facts in this case are not, and were never, in dispute. In 1986, defendant Gerald Armstrong ("Armstrong") and plaintiff Church of Scientology International ("CSI") entered into a settlement agreement ("the

¹ This appeal is related to, and has been consolidated with, Church of Scientology v. Superior Court, Case No. A107095. That matter arises from the trial court's *sua sponte* vacation and discharge of two sentences for criminal contempt previously imposed by the Honorable Gary Thomas, Superior Court Judge, against the defendant for breaching this contract after having been permanently enjoined from doing so.

² Citations to "Exs, Tab ____" herein refer to the Exhibits in support of Petition For A Writ of Certiorari or, In The Alternative, A Writ of Mandate, filed in Case No. A107095.

Agreement”), Exs Tab 1, pursuant to which Armstrong received \$800,000, dismissed certain legal claims, and agreed, *inter alia*, to strict confidentiality, to forego public mention of Scientology and its leadership, and to avoid voluntarily assisting or participating in litigation against Scientology churches. *Id.*, at ¶7D, pg. no. 6-7. The Agreement provided for liquidated damages for each breach of the contract committed by Armstrong. *Id.* at pg. no. 8.

Subsequently, and repeatedly over a period of many years, Armstrong openly breached the Agreement. In February 1992, CSI sued Armstrong for breaching a settlement agreement on multiple occasions. Exs., Tab 2, Complaint. CSI alleged, *inter alia*, that Armstrong breached various provisions of the Agreement, including paragraph 7(D), which states in pertinent part:

[Armstrong] agrees never to create or publish, or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, and writing or broadcast or to assist another to create, write, film, or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. [Armstrong] further agrees that he will maintain strict confidentiality

and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals or entities listed in Paragraph 1 above.... [Armstrong] agrees that if the terms of this paragraph are breached by him, that CSI and the other Releases would be entitled to liquidated damages in the amount of \$50,000 for each of such breach.

Exs., Tab 2, pg. no. 6-8, (emphasis supplied).

CSI sought liquidated damages for each of Armstrong's breaches, pursuant to the terms of paragraph 7(D), and injunctive relief to preclude Armstrong from committing additional breaches. Armstrong cross-complained, challenging the validity of the Agreement on a number of grounds, including specifically that the liquidated damages provision of paragraph 7(D) was unreasonable and unenforceable. Exs., Tab 3, ¶31, [pg. no. 43.]

On October 17, 1995, the Superior Court, the Honorable Gary Thomas, presiding, granted CSI's motion for summary judgment against Armstrong, upheld the validity of the Agreement, and awarded CSI \$300,000 in liquidated damages (\$50,000 for each of six specified breaches). Judge Thomas' order specifically considered and rejected Armstrong's challenge to the liquidated damages provision of the Agreement:

INVALIDITY OF LIQUIDATED DAMAGES PROVISION:
Defendant's evidence regarding his attorneys' failure to represent his interest (see Fact 43 and 58) is hearsay and/or not based on personal knowledge. The opinion of defendant's attorney as to the validity of the provision (see, e.g., Facts 52-54, 57-60) is irrelevant and hearsay. The fact that two other clients signed a settlement agreement containing the same liquidated damages amounts (see Facts 55-56 and 63-64) does not raise an inference that the provision was unreasonable. Defendant's evidence is insufficient to raise a reasonable inference of unequal bargaining power (no personal knowledge shown that plaintiff, as opposed to Flynn, position defendant as a "deal breaker"); Flynn's statements hearsay; no personal knowledge shown of plaintiff's wealth; wealth alone does not raise inference of unequal bargaining power since no showing defendant desperate for money and had to accept on plaintiff's terms). Defendant's evidence does not raise an inference that plaintiff's calculation is "unfathomable" (Fourteenth Cause of Action seeks \$50,000 for each of 18 letters; Nineteenth Cause of Action is based only on declarations, not on other contacts between defendant and attorney/other clients). Defendant fails to establish how he knows plaintiff had not been injured by his statements at the time of settlement.

Exs., Tab 4, [pg. 82, ln. 19 – pg. 83, ln. 13.]

Judge Thomas also permanently enjoined Armstrong from “doing directly or indirectly any of the following”:

4. Facilitating in any manner the creation, publication, broadcast, writing, filming, audio recording, video recording, electronic recording or reproduction of any kind of any book, article, film, television program, radio program, treatment, declaration, screenplay or other literary, artistic or documentary work of any kind which discusses, refers to or mentions Scientology, the Church and/or any of the Beneficiaries (which includes plaintiff herein, CSI);

5. Discussing with anyone, not a member of Armstrong's immediate family or his attorney, Scientology, the Church and/or any of the Beneficiaries (including CSI)."

Exs., Tab 5, pg. 92.

On May 2, 1996, a final judgment of \$300,000 in liquidated damages and an order of permanent injunction were entered against Armstrong. Exs., Tab 6. Armstrong was unswayed. Indeed, he was so brazen in violating the obligations he undertook in exchange for \$800,000 and the obligations against further breaches imposed by the permanent injunction issued by Judge Thomas that he even appeared in public and on television and radio to attack Scientology and its leadership, announcing that he was violating the court order by doing so.

As a result, Armstrong was twice convicted of criminal contempt in proceedings before Judge Thomas for violating the permanent injunction. Exs., Tabs 8 and 10. To avoid the jail sentences imposed for his contempt convictions, Armstrong fled to Canada, from where he committed the breaches that spawned the instant action, Exs., Tab 15, Answer of Gerry Armstrong, ¶15, [pg. no. 224, ln. 8-10], and publicly defamed Judge Thomas by alleging that he had either been bribed or extorted by CSI. To avoid paying the damages imposed against him by Judge Thomas, Armstrong filed for bankruptcy, after either spending or "giving away" the \$800,000 he received in the settlement. *Id.* [pg. no. 222, ln. 26-27.]

Armstrong's appeal from Judge Thomas' order and judgment was dismissed by this Court on December 23, 1997, on the basis of the fugitive disentitlement doctrine. Exs., Tab. 8

B. Proceedings Below.

Neither the Agreement nor Judge Thomas' order and judgment dissuaded Armstrong from his contumacious breaches, and his flight to Canada afforded him the opportunity to avoid jail and continue his simultaneous contractual breaches and violations of the permanent injunction. On April 2, 2002, CSI filed this action for breach of contract against Armstrong, seeking recovery under the liquidated damages provision of the Agreement for 201 additional breaches of the Agreement. Exs., Tab 14. In his answer, Armstrong *admitted* all 201 breaches saying that he did so "at the will of God." *Id.* [pg. no. 223 at ln. 6-7.] Armstrong further stated that he would continue to breach the Agreement because, in his view, the permanent injunction was "illegal, unconstitutional, greatly stupid, impossible to perform, anti-public policy, anti-American, anti-religion, diabolical, insane and clearly unenforceable," and because, by issuing the injunction, Judge Thomas "abetted...illegal blackmail." *Id.* [pg. no. 223, ln. 24 - pg. 224, ln. 5.]

This action was set for trial on April 9, 2004 by the Honorable Lynn Duryee. On that day, the trial court first heard argument on, and took under submission, CSI's motion *in limine* to preclude Armstrong from

relitigating the validity and enforceability of the Agreement. The court then invited opening statements from counsel. Exs., Tab 16, Reporter's Transcript of Proceedings, April 9, 2004, pg. 25, Exs. pg. no. 320 (hereinafter ("RT ____"). In the midst of Armstrong's counsel's opening statement, Judge Duryee interjected that she would consolidate the damages trial in this action with Armstrong's sentencing for his third contempt conviction arising from his defiance of Judge Thomas' permanent injunction. RT 44, p. 339.

At the conclusion of opening statements, CSI moved for judgment on Armstrong's 131 breaches of contract that CSI sought to pursue on the grounds that: (1) Armstrong admitted the breaches; (2) the enforceability of the provisions of the Agreement previously had been litigated to judgment; and (3) nothing alleged in Armstrong's counsel's opening statements amounted to a defense. RT 49, p. 344. After a brief recess, the trial court announced its conclusion that Armstrong's affirmative defenses this breach of contract action were both precluded by *res judicata* and, in any event, were without merit:

The court agrees with the motion for directed verdict on the defenses. That is that none of the circumstances that were described in the opening statement by Mr. Greene amount to a defense in this case. And it appears that there is no quarrel but that these 131 acts did occur. And it's quite clear from Exhibit Number 1, that the settlement agreement did provide for liquidated damages for violating the terms of

the settlement agreement. And it also is quite clear from the court's judicial notice that this matter has been thoroughly litigated and that a trial is not required for a final resolution of the matter.

So I do believe that these defenses have been previously litigated, previously ruled upon, and in addition the court has listened to the opening statements of the defense. And even if those things were proven to be true, there is no ambiguity in the settlement agreement. And defendant, in accepting that money, did undertake to abide by the terms and conditions of the settlement agreement. And that particular provision was not bilateral, it was unilateral. So that even if the Church said horrible things about Mr. Armstrong, he is not justified to violate the terms of the settlement agreement, but would have other remedies under the law.

RT 56 [pg. no. 359.]

As to damages, however, the trial court ruled that CSI was only entitled to recover damages in the same amount that Armstrong had received as consideration eighteen years earlier, when the contract was executed. *Id.* Since Armstrong previously had been assessed damages of \$300,000 by Judge Thomas – which he never paid, having declared bankruptcy – the trial court limited the liquidated damages to \$500,000, which it characterized not as compensation, but as “punishment.”

Mr. Armstrong received a benefit under the settlement agreement of \$800,000. And I think it would be unconscionable to *punish* him beyond what the benefit was that conferred to him. He's previously been *sanctioned* in the sum of \$300,000.

So my thought is to enter judgment for the plaintiff, on the admitted violations, of \$500,000.

RT 56-57 [pg. no. 350-351].

On May 20, 2004, the Court entered judgment in favor of CSI in the amount of \$500,000. The trial court also ordered that the time Armstrong would have, but never, served on all three contempt convictions would be deemed served. RT 62, p. 356.

This appeal followed.

ARGUMENT

I. The Proper Standard Of Review Is *De Novo*

CSI challenges the trial court's order and judgment for having disregarded clear, long-standing principles of claim and issue preclusion and for having misapplied the statutory and common law principles of law governing the reasonableness and enforceability of the Agreement's liquidated damages provision. Because there is no dispute as to any material fact pertinent to those issues, the standard of review of the trial court's actions with respect to the questions of law presented is *de novo*.

Questions of law are independently reviewed by Courts of Appeal. *Lomeli v. Department of Corrections*, 108 Cal. App. 4th 788, 794 (2003), quoting *Rodriguez v. Solis*, 1 Cal. App. 4th 495, 502 (1991). Even to the extremely limited extent, if any, that this appeal might present a mixed question of fact and law, the correct standard of review remains *de novo* or

independent review, because that is the appropriate standard for mixed questions when the issues, as here, are “predominantly legal.” *People v. Ault*, 2004 Cal. LEXIS 7574 at *22-23 & n. 8 (Cal. Sup. Ct., August 16, 2004).

II. The Court Erred As A Matter Of Law By Declining To Apply The Liquidated Damage Clause of the Contract According To Its Express Terms

Paragraph 7(D), the liquidated damage provision of the Agreement, specifically provides for \$50,000 per breach. Judge Thomas’ order and judgment in the earlier breach of contract action between CSI and Armstrong addressed, considered, and determined the issue of the reasonableness and enforceability of paragraph 7(D) and found it both reasonable and enforceable.

The trial court in the instant action refused to apply the liquidated damage provision to its full extent on the ground that it is *now* unreasonable to do so, because Armstrong would be liable in an amount greater than he was paid eighteen years ago when the Agreement was executed. In so doing, the trial court committed fundamental legal error in several respects:

(1) Armstrong was collaterally estopped to challenge the liquidated damage clause’s reasonableness and enforceability, especially after the trial court rejected the defenses by which Armstrong sought to raise such precluded issues.

(2) Armstrong offered no evidence to shift the burden to CSI to justify the liquidated damages provision, as required by Civil Code Section 1671 and the cases construing it.

(3) The trial court erred in confusing cumulative judgments exceeding \$800,000 with punishment because, as a matter of law, liquidated damages are not and cannot be punishment. The trial court also had no authority to limit CSI's recovery under the liquidated damages provision by characterizing it as "unconscionable." A reasonable, enforceable liquidated damages provision is, by definition, *not* unconscionable.

A. Collateral Estoppel Precluded Re-Adjudication Of The Liquidated Damage Clause's Reasonableness

In 1995, in the judgment in the first breach of contract action, Judge

Thomas stated the following:

As to all causes of action (4th, 6th & 11th), Defendant fails to raise a triable issue as to whether the liquidated damages provision is invalid... The law now presumes that liquidated damages provisions are valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made. Defendant's evidence is not sufficient to raise a triable issue in that regard... He clearly knew of the provision yet chose to sign it. He has not shown that he had unequal bargaining power or that he made any efforts to bargain or negotiation with respect to the

provision... Finally, Defendant points to the fact that other settlement agreements [between others and CSI] contain \$10,000 liquidated damages provision. This alone is not sufficient to raise a triable issue in that defendant has not shown that circumstances did not change between 12/86 and 4/87 and that those settling parties stand in the same or similar position to defendant (i.e., that they were as high up in the organization and could cause as much damage by speaking out against plaintiff or that they have/had access to as much information as defendant.)

Exs., Tab 4, pg. no. 82-83. The detailed analysis of the issue in Judge Thomas' judgment, and that judgment's findings and conclusions, precluded relitigation of the enforceability or reasonableness of the liquidated damages provision by Judge Duryee.

“Collateral estoppel, or issue preclusion, ‘precludes relitigation of issues argued and decided in prior proceedings.’” *Mycogen Corp. v. Monsanto Co.*, 28 Cal. 4th 888, 896 (2002), quoting *Lucido v. Superior Court*, 51 Cal. 3rd 335, 341 (1990). For the doctrine to preclude a second, subsequent adjudication, the proponent of the doctrine must establish that: (1) the present issue is identical to one litigated in a prior proceeding; (2) the prior proceeding resulted in final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity to a party to the prior proceeding. *People v. Barragan*, 32 Cal. 4th 236, 252-53 (2004); *Grinham v. Fielder*, 99 Cal. App. 4th 1049, 1054 (2002); *Brinton v. Bankers Pension Services*, 76 Cal. App. 4th 550, 556 (1999).

There is no question that the elements of collateral estoppel are satisfied here. In the prior litigation before Judge Thomas, Armstrong had every opportunity to litigate the issue, and the result was a final judgment in favor of CSI, in which the Court found that the Agreement was valid and its terms, including the paragraph 7(D), were enforceable.

Thus, the trial court below was entirely correct in dismissing Armstrong's effort to relitigate his prior defenses to CSI's breach of contract claim. However, after the court dismissed these defenses, the issue of the liquidated damages provision's viability should have disappeared from the landscape of the underlying litigation, leaving only the findings of Judge Thomas's final judgment to be enforced. Instead, in an erroneous misapplication of the doctrine of collateral estoppel, and after having dismissed Armstrong's ill-conceived attempt at relitigation, the trial court declined to enforce the provision according to its express terms and effectively erased the very finding that it should have enforced. See *People v. Neely*, 70 Cal. App. 4th 767, 782 (1999) ("A defense founded upon the conclusiveness of a former adjudication...is waived if not raised either by the pleadings or the evidence").

B. The Trial Court Applied The Wrong Legal Standard

The trial court's disregard of the conclusive effect of Judge Thomas' findings was not its only error of law. The trial court *sua sponte* determined that it would be unreasonable to apply the \$50,000 per breach provision of

the Agreement to Armstrong's self-admitted 131 breaches because the contractually mandated result would require Armstrong to pay far more in damages than he received as consideration when he undertook his contractual obligations in 1986. RT 56-57. Even assuming that it is relevant whether Armstrong caused more harm than benefit he received – which, of course, it is not – the trial court's ruling is antithetical to well-entrenched, unambiguous statutory and case law.³

Section 1671 of the California Civil Code creates a presumption that a liquidated damages provision such as paragraph 7(D) of the Agreement is valid, and requires the party who seeks to invalidate it to show that “the provision was unreasonable under the circumstances existing *at the time* the contract was made.” Civil Code § 1671 (emphasis added). Section 1671 has been routinely enforced by the courts for decades. See, e.g., *Weber, Lipshire & Co. v. Christian*, 52 Cal. App. 4th 645, 654-55 (1977); *O'Connor v. Televideo System, Inc.*, 218 Cal. App. 3rd 709, 718 (1990).

Armstrong failed altogether to produce any of the evidence required for him to overcome the Section 1671 presumption and shift the burden of

³ The trial court initiated the concept that CSI's judgment must be limited to \$800,000. Even the fervent imaginations of Armstrong and his counsel did not conjure up such an inappropriate argument. The issue was never briefed, and the trial court gave itself no opportunity to reflect upon the wisdom of its idea. In retrospect, the trial court was quite correct when it said, of its own proposal, “It's dangerous when judges start thinking of issues themselves.” *Id* at 19.

proof to CSI. Armstrong failed to bring forth any evidence “that the amount stated in the contract was not determined, or that it was neither impracticable nor extremely difficult to determine actual damages, [or that the] parties did not really agree upon the amount set forth as liquidated damages through any mutual endeavor.” *Barbara v. Sokol*, 101 Cal. App. 3rd 725, 733 (1980).

In 1986, when the Agreement was signed, Armstrong had not breached it hundreds of times, and had not threatened to do so. No one could have anticipated that he would do so, except perhaps Armstrong himself. The trial court’s conclusion that Armstrong’s subsequent, deliberate, contemptuous, serial breaches somehow retroactively renders the liquidated damages provision unreasonable has the ironic and disastrous effect of rewarding Armstrong for his monomaniacal defiance by immunizing him from any future civil liability.

Moreover, the reasonableness of a liquidated damages provision is determined as of the date of the execution of the contract, *not* at the time of the breach, and certainly *not* at the time of a subsequent judgment finding breach. *Hong v. Somerset*, 161 Cal. App. 3d 111 (1984); *United Savings & Loan Ass’n of California v. Reeder Development Corp.*, 57 Cal. App. 3d 282, 299 (1976), quoting in part *Better Foods Markets v. American District Telegraph Co.*, 40 Cal. 2d 179, 185 (1953).

The validity of the liquidated damages provision depends upon its reasonableness at the time the contract was made and not as it appears in retrospect. *Accordingly, the amount of damages actually suffered has no bearing on the validity of the liquidated damages provision.*

Hong v. Somerset, 161 Cal.App.3d at 115 (emphasis supplied), citing California Law Revision Comm'n Comment to Civil Code Section 1671, subd. (b); *United Savings & Loan Ass'n of California v. Reeder Development Corp.*, 57 Cal. App. 3d at 299 (“[I]t is immaterial whether or not there is impracticality or difficulty in fixing damages after there has been a breach of the contract.”).

Thus, the trial court's revision of the Agreement to assess the quantum of damages is also error as a matter of law.

C. The Trial Court Erred By Limiting Liquidated Damages Because Armstrong Purportedly Was “Punished Enough”

The trial court also departed from the parties' liquidated damages provision by concluding – without a legal or even a factual basis – that Armstrong would be “punished enough” by a damages award of \$500,000. RT 57. That, too, was erroneous as a matter of law, and reflects a misunderstanding of the nature of liquidated damages.

Liquidated damages are a means of compensation for injury, not punishment for wrongdoing. See, e.g., *Harbor Island Holdings v. Kim*, 107 Cal. App. 4th 790, 796 (2003), (a liquidated damages provision represents

the “result of a reasonable endeavor by the parties to estimate a fair average *compensation* for any loss that may be sustained”) (emphasis supplied); *Chodos v. West Publishing Co.*, 292 F.3d 992, 1002 (2002), (California law defines liquidated damages as “an amount of *compensation* to be paid in the event of a breach of contract, the sum of which is fixed and certain by agreement....”) (emphasis supplied), quoting *Kelly v. McDonald*, 98 Cal.App. 121, 125 (1929), *overruled in part on other grounds*, *McCarthy v. Tally*, 46 Cal. 2d 577 (1956).

CSI is entitled to its contractually created, reasonable and enforceable, liquidated damages for each and every breach Armstrong committed pursuant to an Agreement already adjudicated to have been reasonable and enforceable at the time of its creation. Punishment is another question, to be determined in the context of a criminal proceeding or punitive damages, where applicable, but it is neither an element of, nor relevant to, the issue of enforcing a valid liquidated damages provision.

Similarly, the trial court’s conclusion that it would be “unconscionable” for CSI to recover cumulative damages an amount in excess of what it paid Armstrong under the terms of the contract is without legal support or merit. A liquidated damages provision that has already been adjudicated as reasonable and enforceable cannot become unconscionable just because one party to the contract decides to commit several hundred willful breaches. As this Court held in *H. S. Perlin Co. v.*

Morse Signal Devices, 209 Cal. App. 3rd 1289, 1301-02 (1989), “the reasonableness standard set forth in section 1671 . . . provides for more judicial scrutiny than is allowed under the unconscionability standards.” Thus, where a contract “meets the requirements imposed by section 1671,” the defendant “cannot make any claim the contract is nonetheless unconscionable.” *Id.* Moreover, there is not a single shred of authority for the proposition that the consideration received under a contract is the upper limit for a liquidated damages provision, under an “unconscionability” analysis.

CONCLUSION

There is no legal justification for ignoring the doctrine of collateral estoppel to disregard a reasonable and enforceable liquidate damages provision or artificially capping CSI’s damages to convert a judgment in CSI’s favor into a license for Armstrong to breach the Agreement at will and with impunity.

Even assuming the trial court had legal authority to limit CSI’s recovery, which it distinctly did not, the judgment gives Armstrong a windfall to which he certainly is not entitled – the use of \$800,000 for 18 years without interest while committing over 200 breaches and practical immunity for any further breaches because his breaches have already met the arbitrary, court-imposed maximum in damages. In effect, the trial court has rewarded Armstrong because he has breached the contract so many

times and promises to do it again. Reversal for all for the foregoing reasons is compelled by this record, along with the imposition of damages according to the parties' Agreement.

Dated: August 23, 2004

WILSON CAMPILONGO LLP

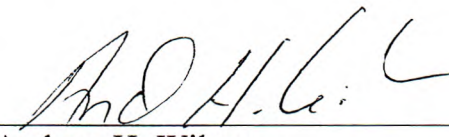
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CERTIFICATE OF LENGTH

Pursuant to Rule 14, subdivision (c)(1) of the California Rules of Court, appellant certifies that the number of words in the body of this brief is approximately 4,163 according to the word processor program used for this brief.



Andrew H. Wilson

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of Marin, State of California. I am over the age of 18 and not a party to the within action; my business address is 475 Gate 5 Road, Suite 212, Sausalito, California 94965.

On August 23, 2004, I served the foregoing document(s) described as follows:

**APPELLANT'S OPENING BRIEF and
APPELLANT'S APPENDIX, VOL. I & II**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

XX BY MAIL:

Clerk of the Superior Court
Marin County Superior Court
3501 Civic Center Drive
San Rafael, CA 94913
(Hon. Lynn Duryee)

XX BY FEDERAL EXPRESS OR OVERNIGHT COURIER:

Gerald Armstrong
#1-45950 Alexander Avenue
Chilliwack, B.C. V2P 1L5
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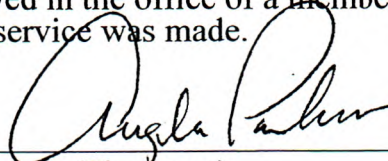
California Supreme Court (5 copies)
350 McAllister Street
San Francisco, CA 94102

Executed on August 23, 2004, at Sausalito, California

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Angela Parker
(Type or Print Name)


(Signature)